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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,922	06/13/2001	Karin Angela Hing	HING3001/REF	8656

7590

05/02/2006

EXAMINER

Bacon & Thomas
625 Slaters Lane
4th Floor
Alexandria, VA 22314

ART UNIT	PAPER NUMBER
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DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Address: COMMISSIONER FOR PATENTS

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09/18/2002

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT

PAPER

60428

DATE MAILED:

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Commissioner for Patents

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/20/2006 has been entered.

The reply filed on 3/20/2006 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Applicant is attempting to shift to claiming another invention. The general policy of the Office is not to permit this.

More specifically: The amendment filed on 3/20/2006 presents only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1. Applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-2, 4-27, and 32-42 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The originally presented, elected, searched and examined claims were directed to a method of making a foamed ceramic. Present claims 1-2, 4-27, and 32-42 are directed to a method of altering a human or animal body (the preamble notwithstanding). The inventions (i.e. the invention originally claimed and the invention presently claimed) do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: As per the prior Office action, the originally claimed method would have been obvious, therefore, there is no inventive concept nor special technical feature. And since the originally claimed invention lacks a special technical feature, there can be no "same or corresponding special technical feature". Therefore there is no unity of invention.

From MPEP 819: Office Generally Does Not Permit Shift

The general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is once made and action given on the elected subject matter.

Note that the applicant cannot, as a matter of right, file a request for continued examination (RCE) to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined (i.e., applicant cannot switch inventions by way of an RCE as a matter of right). When claims are

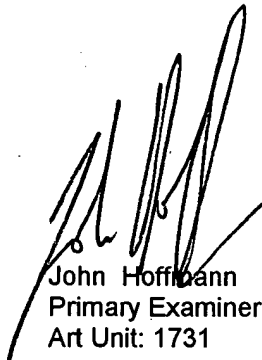
presented which the examiner holds are drawn to an invention other than the one elected, he or she should treat the claims as outlined in MPEP § 821.03

From MPEP 811.02

Since 37 CFR 1.142(a) provides that restriction is proper at any stage of prosecution up to final action, a second requirement may be made when it becomes proper, even though there was a prior requirement with which applicant complied. Ex parte Benke, 1904 C.D. 63, 108 O.G. 1588 (Comm'r Pat. 1904).

See 37 CFR 1.111. Since the above-mentioned reply appears to be bona fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

See also 35 U.S.C. 121 and 372 and 37 CFR 1.499.


John Hoffmann
Primary Examiner
Art Unit: 1731
4-28-06